STATE OF MICHIGAN

COURT OF APPEALS

ADRIANNE NISWONGER, as Next Friend of JOHN M. CLARK, Plaintiff-Appellee, v QUALITY DAIRY COMPANY, Defendant-Appellant.	UNPUBLISHED May 10, 2005 No. 251885 Ingham Circuit Court LC No. 02-002054-NO

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Defendant appeals by leave granted the order denying defendant's motion for summary disposition under MCR 2.116(C)(10) in this premises liability action. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

The following facts are undisputed. Plaintiff Adrianne Niswonger was driving a van and pulled into a parking space at defendant's store that was just to the right of the entrance. Plaintiff John Clark, Niswonger's eleven-year-old son, went into the store to purchase two gallons of milk. As Clark was returning to the van with the milk in his arms, he stepped off the concrete bumper block on the driver's side of the vehicle and into a pothole. Clark fell and twisted his knee, which resulted in a fractured tibia. Niswonger admitted at deposition that the pothole was clearly visible, and Clark admitted that if he had looked down when coming out of the store he probably would have seen it.

Defendant moved for summary disposition, arguing that the pothole was an open and obvious danger and that there were no special aspects of the pothole that prevented Clark from seeing the hazard. The trial court denied the motion, finding that a question of fact existed with regard to whether a "reasonable person may not foresee the danger." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

A landowner owes a duty to an invitee to exercise reasonable care to protect an invitee from unreasonable risk of harm caused by a dangerous condition on the land. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). This duty does not encompass open and obvious dangers unless special aspects of the condition make the risk unreasonably dangerous. *Id.* An alleged dangerous condition is open and obvious if an average user with ordinary

intelligence would have been able to discover the danger and the risk presented on casual inspection. *Joyce v Rubin*, 249 Mich App 231, 238; 642 NW2d 360 (2002). Dangers that are readily visible such as ordinary potholes in a parking lot or steps have consistently been found to be open and obvious. *Lugo, supra* at 520; *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614; 537 NW2d 185 (1995). There are no special aspects of the pothole that make the risk of harm unreasonably high. *Lugo, supra* at 517. A review of the photographs reveals that the pothole appears to be approximately three feet long, runs perpendicular to the curb, and does not begin until at least six inches away from the concrete bumper block. Thus, the only way it could be obscured is if the viewer was lying on the ground behind the bumper block. The pothole did not create a risk of serious injury or death. And contrary to plaintiff's suggestion, the pothole was not unavoidable. Patrons leaving defendant's store could take multiple routes to their respective vehicles, as demonstrated by the fact that Clark was not required to traverse the pothole as he entered the store. The trial court should have granted defendant's motion for summary disposition.

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter